Teamsters Local No. 372, International Brotherhood of Teamsters, AFL-CIO and Detroit Mailers Union No. 2040, International Brotherhood of Teamsters, AFL-CIO and GCIU Local Union No. 289, Graphic Communications International Union, AFL-CIO and GCIU Local Union No. 13N, Graphic Communications International Union, AFL-CIO and Newspaper Guild of Detroit, Local 22, the Newspaper Guild, AFL-CIO and Detroit Typographical Union No. 18, Communications Workers of America, AFL-CIO and Metropolitan Council of Newspaper Unions and Detroit Newspaper Agency d/b/a Detroit Newspapers. Cases 7-CC-1667 and 7-CC-1670

March 14, 1997

## **DECISION AND ORDER**

## By Chairman Gould and Members Fox and Higgins

The issue presented is whether to approve a unilateral formal settlement executed in the above cases by the General Counsel and the Respondent Unions over the objections of the Charging Party, the Detroit Newspaper Agency d/b/a Detroit Newspapers. For the reasons set forth below, we conclude that it would not effectuate the purposes and policies of the Act to approve the settlement.

The consolidated complaints allege that the Respondent Unions engaged in certain unlawful secondary boycott activities in violation of Section 8(b)(4)(ii)(B) of the Act in connection with their 19month strike against the Charging Party. 1 Specifically, the complaints allege that, during October and November 1996, the Respondent Unions attempted to coerce various named Employers to cease doing business with (i.e., to cease advertising with) the Charging Party by: (1) engaging in signal picketing at the Employers' facilities; (2) engaging in mass handbilling at the Employers' facilities; and (3) engaging in mass demonstrations within the Employers' premises, which conduct included wearing T-shirts encouraging customers not to shop at the businesses and confronting and intimidating customers as the demonstrators moved around within the business premises. As a remedy, the complaints request a broad cease-and-desist order requiring the Respondent Unions to cease and desist from threatening, coercing, or restraining the named Employers or any other person to cease doing business with the Charging Party or any other person,

<sup>1</sup> The underlying charges were filed on October 28 and November 25, 1996. The Regional Director subsequently submitted the charges to Advice, which concluded that a complaint should issue, and the Regional Director issued the complaints shortly thereafter, on December 5 and 9, 1996. The Regional Director subsequently consolidated the complaints by order dated December 13, 1996.

and to post a notice and provide copies for posting by the Employers.

The proposed formal settlement was executed by all six of the striking Respondent Unions and their umbrella organization, Respondent Metropolitan Council of Newspaper Unions, on December 18, 1996, prior to the scheduled 10(1) hearing before the U.S. District Court. The settlement provides for the same relief requested in the complaints, except that the stipulated cease-and-desist provision is limited to labor disputes involving the Charging Party, i.e., it only prohibits the Respondent Unions from threatening, coercing, or restraining the named Employers or any other person to cease doing business with the Charging Party. In addition, like a prior 8(b)(1)(A) settlement involving the parties,2 the settlement contains a nonadmission clause providing that the signing of the settlement by Respondents does not constitute an admission that they have violated the Act and that the execution of the settlement on behalf of the Metropolitan Council of Newspaper Unions does not constitute an admission that it is a labor organization or legal entity of any

Unlike the prior 8(b)(1)(A) settlement, the Charging Party refused to join in, and filed objections to, the instant settlement. Briefly summarized, the Charging Party's objections were as follows:

- 1. Unlike the 8(b)(1)(A) settlement, the Charging Party was not consulted in advance or allowed to participate in the negotiation of the settlement with the Respondent Unions.
- 2. The stipulated cease-and-desist order merely "parrots" the language of Section 8(b)(4)(B) does not specify whether the types of conduct alleged in the complaints are prohibited, and is therefore vague and incomprehensible to all but a skilled labor lawyer.
- 3. The Respondent Unions publicly announced in an article in the Sunday, December 22, 1996 edition of the Detroit Sunday Journal, the Unions' alternative newspaper and strike publication, that the settlement provides that the Unions did not violate the Act and that it permits the Unions to resume their boycott activities, and indeed to engage in more boycott activities. The article, written by Newspaper Guild bargaining committee member and picket line captain Robert Ourlian, who is alleged in Case 7–CC–1667 to be an agent of the Respondent Unions, was entitled "Boycott gets clearance from NLRB," and stated, among other things:
- —that the "all-fronts boycott against advertisers . . . would continue";
- —that "federal labor officials gave unions the green light for the campaign" in the settlement;

<sup>&</sup>lt;sup>2</sup>The settlement in the 8(b)(1)(A) cases (Cases 7-CB-10771 et al.) was not opposed by the Charging Party and was approved by the Board by unpublished order dated July 24, 1996.

—that strike organizers said that strikers and their supporters on Monday will "don the now familiar T-shirts with large letters reading 'Please Do Not Shop Here' and walk through stores of advertisers in several metro Detroit communities" and that "leaflet teams will resume normal positions at store and driveway entrances":

—that "the agreement clarifying the rights and responsibilities of unions, signed by union leaders and federal labor officials, asserts the unions have done nothing illegal, contrary to repeated claims by the newspapers";

—that the settlement gives "strikers and their supporters the right to hand out leaflets at the entrances and driveways of stores that advertise and to communicate with customers in other ways, including the 'Please Do Not Shop Here' shirts;'

—that a union spokesperson said that a report in the Detroit News saying that the settlement would end both leafleting and store walks was "'knowingly false"; and

—that "in fact, union lawyers now believe that more expressions of the boycott against advertisers will be allowed, [which] could include large signs at the entrances of stores and clearly marked clothing worn by strikers standing at store entrances."

In response to the Charging Party's objections, the Regional Director and the General Counsel assert as follows. With respect to the first objection, they assert that the Charging Party was consulted about the terms of the settlement, but the Region concluded that, in contrast to the earlier 8(b)(1)(A) cases, settlement discussions would proceed more quickly by dealing initially with counsel for the Unions.

With respect to the second objection, the Regional Director asserts that the Region initially proposed including some specific examples of conduct which would be prohibited in the cease-and-desist order, but the parties discussions proved unsuccessful as they devolved into attempts to define closely what would be described as prohibited so as not to preclude permissible conduct. The Regional Director and the General Counsel further assert that the broad nature of the language finally agreed to, which tracks the statutory language, provides a full remedy for the conduct alleged in the complaints.

With respect to the third objection, the Regional Director acknowledges that the statements by Guild Agent Ourlian in the Unions' newspaper "appear to be overly favorable interpretations of the terms of the Settlement Stipulation" and "there also appear to be some statements urging conduct, which, if followed, might raise questions as to the unions' good faith in abiding by the terms of the settlement." However, the Regional Director asserts that the Charging Party has not submitted any evidence that the Unions have en-

gaged in further violative conduct. Further, the Regional Director and General Counsel assert that the best way to deal with any possible future violations would be through contempt procedures available after the settlement has been approved by the Board and court of appeals. Finally, inasmuch as the settlement fully remedies the complaint allegations, they assert that inclusion of a nonadmission clause is not a basis for disapproving the settlement, citing *Mine Workers (James Bros. Coal Co.)*, 191 NLRB 209, 210 (1971).

Having duly considered the matter, we agree with the Regional Director and the General Counsel that the Charging Party's first and second objection are not a basis for rejecting the settlement. With respect to first objection, we find nothing inappropriate in the manner in which the Region chose to conduct settlement negotiations in this case. See NLRB Casehandling Manual, Sec. 10128.6 (providing that, generally, settlement discussions, to be most effective, should be conducted with the respondent alone, or with its representative or counsel). Although a different procedure may have been followed in negotiating the prior settlement, this did not require the Region to follow the same procedure in negotiating the instant settlement.

With respect to the second objection, we do not agree with the Charging Party that the stipulated cease-and-desist order is too vague. The language of the order is consistent with the standard cease-and-desist order issued by the Board in 8(b)(4)(ii)(B) cases, and is virtually identical to the order requested in the complaint.<sup>3</sup> Further, similar orders have been enforced by the courts in a number of prior contempt proceedings. See, e.g., NLRB v. Laborers Local 1140 (Army Reserve Center), 577 F.2d 16 (8th Cir. 1978), cert. denied 439 U.S. 1070 (1979); NLRB v. Sequoia Carpenters, 568 F.2d 628 (9th Cir. 1977); and NLRB v. Teamsters Local 282 (U.S. Trucking Corp.), 428 F.2d 994 (2d Cir. 1970).

However, we find that the Regional Director and the General Counsel have failed to adequately respond to the Charging Party's third objection regarding the various statements by the Unions' agent in the union strike newspaper. As set forth above, those statements advised employees that the settlement provides that the Unions had done nothing illegal; that the settlement permits the Unions to continue their previous boycott activities; and that the Unions will in fact continue their prior boycott activities. Such statements tend to undermine the stipulated notice to employees, which provides that the Unions will cease and desist from unlawful secondary boycott activities, and are clearly grounds for disapproval of the settlement under prior

<sup>&</sup>lt;sup>3</sup> As indicated above, the only significant difference is that the stipulated order is limited to disputes with the Charging Party.

Board decisions.<sup>4</sup> Accordingly, consistent with those decisions, we reject the instant settlement and remand the proceeding to the Regional Director for further appropriate action.

## CHAIRMAN GOULD, concurring.

In agreement with my colleagues, I would not approve the proposed settlement. I write separately, however, because, unlike my colleagues, I would rely on the Charging Party's second objection as well as its third objection in rejecting the settlement, and because I wish to fully articulate my views in this area.

The purpose of settlements, be they formal, informal, or non-Board, is to "bring an end to labor disputes, and so far as possible to extinguish all the elements giving rise to them." Wallace Corp. v. NLRB, 323 U.S. 248, 254 (1945). In evaluating settlements in light of this purpose, the Board has traditionally considered a number of factors, including whether the settlement stipulation is reasonable in light of the nature of the violations alleged in the complaint and other surrounding circumstances, and whether it will bring an early restoration of industrial peace. See Independent Stave Co., 287 NLRB 740, 741-743 (1987). În addition, the Board in several cases has considered whether the respondent has taken any actions inconsistent with the settlement agreement that would effectively undermine or destroy the efficacy of the stipulated notice. See, e.g., Bingham-Williamette Co., 199 NLRB 1280 (1972), enfd. mem. 491 F.2d 1406 (5th Cir. 1974); and News-Texan, Inc., 174 NLRB 1035 (1969), enfd. 422 F.2d 381 (5th Cir. 1970).

These factors are particularly applicable to cases such as the instant one involving 8(b)(4) allegations that are subject to the mandatory injunction procedures set forth in Section 10(1) of the Act. Unlike under Section 10(j), where the Board is given discretion whether to seek injunctive relief, the Board is not involved in

statutory interpretation at the 10(1) stage of an 8(b)(4) proceeding. The Board at this stage must therefore rely on the General Counsel's determination that there is "reasonable cause" to support an 8(b)(4) complaint, and must assess any settlement against and in light of the allegations and whether it is consistent with the integrity of the General Counsel's complaint,2 Further. given the strong congressional mandate set forth in 10(1) favoring expedited and effective injunctive relief against alleged 8(b)(4) violations, it is also particularly important that the Board consider whether any settlement reached prior to seeking such mandatory relief would undermine that congressional intent by failing to bring an early end to the alleged unlawful conduct. Finally, inasmuch as notice posting is generally the only affirmative remedy ordered by the Board or courts in an 8(b)(4) case, it is also particularly important that the Board consider whether a respondent has done anything to undermine that remedy in deciding whether to approve such a settlement.

Evaluated under these standards, the instant settlement in my judgment clearly fails in all respects. First, as indicated by the Charging Party, the settlement fails to adequately address the allegations of the complaint. The complaint in this case alleges that the Respondent Unions violated Section 8(b)(4)(ii)(B) by engaging in certain specified conduct, including signal picketing, mass handbilling, and walkthroughs. The settlement, however, fails to specify whether this conduct is prohibited. Although it includes the usual 8(b)(4)(ii)(B) general cease-and-desist provision, this is not a typical 8(b)(4)(ii)(B) picketing case. Rather, as indicated, this case involves other, nonpicketing conduct such as walkthroughs. That such conduct raises close or novel issues under 8(b)(4)(B) is evidenced by the Region's submission of the case to the Division of Advice.3 Thus, by including a nonadmission clause and failing

<sup>&</sup>lt;sup>4</sup> See News-Texan, Inc., 174 NLRB 1035 (1969), enfd. 422 F.2d 381 (5th Cir. 1970) (Board affirmed trial examiner's decision setting aside an informal settlement agreement on ground that the respondent employer's president made a speech to all employees on same day as the settlement was executed, and subsequently distributed a copy of the speech to employees, stating that the company only agreed to reinstate and pay backpay to the discriminatee because she did not desire reinstatement and did not suffer any loss of pay). See also Bingham-Williamette Co., 199 NLRB 1280 (1972), enfd, mem. 491 F.2d 1406 (5th Cir. 1974), and cases cited therein (Board upheld Regional Director's decision setting aside informal settlement on ground that the respondent employer had posted, along with the stipulated Board notice, both the settlement, with the nonadmission clause circled, and its own side-notice stating that it did not feel that it had done anything wrong and that the settlement provides that the company does not admit that it violated the Act). Although the settlements in News-Texan and Bingham-Williamette were informal, in agreement with our concurring colleague, we find that this is not a relevant distinction.

<sup>&</sup>lt;sup>1</sup>I agree with my colleagues, however, that the Charging Party's first objection does not warrant disapproval of the settlement.

<sup>&</sup>lt;sup>2</sup> As the Board indicated in *Independent Stave*, the settlement need not necessarily fully remedy the allegations of the complaint. I have emphasized this point in my critique of earlier Board settlement initiatives. See W. Gould, *Japan's Reshaping of American Labor Law* 54–55 (1984). But the settlement must of course be evaluated in light of the violations alleged by the General Counsel in determining whether the settlement is reasonable and will effectuate the purposes of the Act. This does not mean that the Board will evaluate the merits of the General Counsel's allegations, but simply that the Board will assess the reasonableness of the settlement in light of those allegations. As indicated above, this is particularly important in cases such as the instant one since the Board is not involved in stautory interpretation at the 10(1) stage of the proceeding and must therefore place primary focus on whether the settlement comports with the General Counsel's allegations.

<sup>&</sup>lt;sup>3</sup> As indicated in my colleagues' opinion, this case was originally submitted to the General Counsel's Division of Advice for a determination whether the Unions' conduct in making mass visits to or walkthroughs at the stores violated 8(b)(4)(ii)(B). See also *Pye v. Teamsters Local 122*, 875 F.Supp. 921 (D.Mass. 1995), affd. 61 F.3d 1013 (1st Cir. 1995). Of course, at this stage of the proceeding I express no view on whether I would find that such conduct violates the statute in an unfair labor practice proceeding before the Board.

to specify in the order whether the alleged types of conduct are prohibited and subject to contempt sanctions, the settlement leaves such close issues essentially unresolved.<sup>4</sup>

Second, by all appearances, the settlement will do little to bring an early restoration of industrial peace. Although the strike has since ended, the boycott continues. Further, as indicated by the union statements in its December 22 strike newspaper, it appears that the Respondent Unions intend to continue engaging in the very same type of conduct alleged to be unlawful in the underlying complaint, including walkthroughs. Thus, the article states that the settlement provides that the Unions "have done nothing illegal" and gives the Unions "a green light for the campaign"; that the "all fronts boycott will continue"; that the strikers and their supporters will continue to "don the now familiar T-shirts with large letters reading 'Please Do Not Shop Here' and walk through stores of advertisers"; and that "leaflet teams" will also "resume normal positions" at store and driveway entrances.5

In my view the only reasonable interpretation of these statements is that the Unions intend to continue their prior activities and, moreover, that the Unions apparently believe that the settlement sanctions such conduct. Indeed, the Regional Director acknowledges as much in his transmittal memo by stating that the Unions' statements appear to be "overly favorable interpretations" of the settlement and that the urged conduct, if engaged in, would "raise a question about the Unions' good faith in abiding by the terms of the settlement."

Finally, regardless of whether the Unions actually engage in future unlawful conduct, the Unions' statements clearly undermine the efficacy of the stipulated notice to employees and members. The notice, like the order, states that the Unions will cease and desist from

threatening, coercing, or restraining the named neutrals or any other person where an object is to force or require them to cease doing business with the Charging Party. The Unions' statements, however, which it appears were widely distributed to employees in their strike newspaper, state that the settlement provides that they did nothing illegal and that the strikers can continue their previous secondary boycott activities against the neutrals. Like the respondent employer's statements in News-Texan, supra, such statements suggest "that settlement was quite meaningless" 'minimize[] not only the effect of the notice but also the value and conceivable effect of the Board's processes." News-Texan, 174 NLRB at 1036.7

Although cases such as News-Texan involved informal settlements which did not provide for issuance of a Board order enforceable through contempt proceedings, this is not a relevant distinction in my view. First, it merely begs the question in this case whether the nonadmission stipulation is sufficiently clear to obtain contempt sanctions against the Unions in the event they engage in future nonpicketing conduct such as that alleged in the complaint.8 Second, it fails to recognize that the notice is an important, and indeed integral, part of the remedy in formal as well as informal settlements. In either situation, the notice in most cases is "the principal means by which the Board communicates to those affected" what conduct by the respondent is prohibited or required. Pottsville Bleaching Co., 301 NLRB 1095 (1991).

Moreover, as indicated above, in 8(b)(4) cases notice-posting is normally the only affirmative remedy ordered by the Board. Although in 8(a)(3) or (5) cases the Board may also affirmatively order a respondent to reinstate and/or pay backpay to employees and to bargain with the union, in 8(b)(4) cases the only manifestation of the Board's order that normally touches on employees is the notice.

Accordingly, the Board in my view should jealously guard against any and all conduct which undermines or

<sup>&</sup>lt;sup>4</sup>Compare the district court's order granting the General Counsel's petition for a 10(1) injunction in *Pye v. Teamsters, Local 122*, supra, 61 F.3d 1013, 1015 fn. 4 (decree specifically prohibited respondent unions from "organizing and conducting mass demonstrations, including affinity group shopping, store occupations, occupying parking lots, picketing or other mass activity"). There is no indication here that the failure to specifically cover such conduct was purposeful, i.e., that the General Counsel only intended to partially settle the complaint and has reserved such close issues for litigation.

<sup>&</sup>lt;sup>5</sup> While there is also a statement attributed to union leaders in the article that no harassment of employees will occur during the resumed boycott activities, the union leaders in the same breath reportedly denied, contrary to the allegations of the complaints, that any such harassment ever took place. Thus, the statement that no such harassment will occur in the future has little meaning.

<sup>&</sup>lt;sup>6</sup>Although the Regional Director also states in his December 24 memorandum transmitting the settlement to Washington that the Charging Party had not to date supplied any evidence that the Union had actually engaged in any unlawful conduct, there can be little doubt based on the statements in the article that the Unions intend to resume their previous allegedly unlawful secondary boycott activities.

<sup>&</sup>lt;sup>7</sup> In News-Texan, the respondent employer's president made a speech to all employees on the same day as the informal settlement was executed, and subsequently distributed a copy of the speech to each employee, stating that the employer only agreed to the settlement because the discriminatee did not desire reinstatement and did not suffer any loss of pay. The Union statements here regarding the nonadmission clause are at least as offensive as the employer's statements in News-Texan. See also NLRB v. Union Nacional de Trabajadores, 611 F.2d 926 (1st Cir. 1979) (finding respondent union in contempt of court's decree enforcing Board's decision and order in 8(b)(1)(A) and 8(b)(4)(i)(ii)(B) case where union published side notice in newspaper which destroyed substance and purpose of required notice and expressed union's intention to threaten and use violence in the future).

<sup>&</sup>lt;sup>8</sup> See generally Southwestern Bell Telephone Co., 730 F.2d 166, 172 (5th Cir. 1984) ("The prohibitions contained in judgments or orders that may later ground contempt proceedings should... be as particular as possible so that those bound might know what conduct is forbidden.")

destroys the efficacy of the Board's notice or other remedies. As discussed above, this is particularly vital in cases which allege 8(b)(4) violations and are subject to the mandatory injunction procedures set forth in

Section 10(1) of the Act. Here, the only effective way in which the Board can preserve the integrity of its remedial authority under the circumstances is to reject the settlement.